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Attorney for Google Inc. Welfare Benefit Plan

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Mark Zavislak,

Plaintiff,

v.

Google Inc. Welfare Benefit Plan,

Defendant.

Case No. CV 14-04802 NC

**DEFENDANT GOOGLE INC. WELFARE
BENEFIT PLAN'S ANSWER TO THE
COMPLAINT**

Pursuant to Rule 8 of the Federal Rules of Civil Procedure, Defendant Google Inc. Welfare Benefit Plan (the "Defendant" or "Plan"), by its attorney, answers the complaint as follows:

Jurisdiction

1. Defendant admits the allegations of this paragraph.
2. Defendant denies the allegations of this paragraph, except to admit that the Complaint contains claims for benefits and other relief to which Plaintiff believes he is entitled under the Plan.
3. Defendant is without sufficient knowledge or belief to admit or deny the allegations of this paragraph and therefore, on that basis, denies them. To the extent that the allegations of this paragraph relate to the contents of documents, Defendant denies such allegations as the documents speak for themselves.

5. Defendant admits that this Court has subject matter jurisdiction over this action pursuant to 29 U.S.C. § 1132(e)(1) and 28 U.S.C. § 1331.

Claim For Relief

8. Defendant denies the allegations of this paragraph, except to admit that Anthem Cross Life and Health Insurance Company is the claims administrator and that Google Inc. is the plan administrator.

10. Defendant denies the allegations of this paragraph, except to admit that Plaintiff and spouse both participate in, and are beneficiaries under, the Plan.

12. Defendant is without sufficient knowledge or belief to admit or deny the
 13. allegations of this paragraph and therefore, on that basis, denies them. To the extent that the
 14. allegations of this paragraph constitute legal conclusions, no responsive pleading is required or

14. Defendant denies the allegations contained in this paragraph. To the extent that allegations of this paragraph relate to the contents of documents, Defendant denies such

1 allegations as the documents speak for themselves.

2 15. Defendant is without sufficient knowledge or belief to admit or deny the
3 allegations of this paragraph and therefore, on that basis, denies them. To the extent that the
4 allegations of this paragraph constitute legal conclusions, no responsive pleading is required or
5 given.

6 16. Defendant denies the allegations contained in this paragraph. To the extent that
7 the allegations of this paragraph relate to the contents of documents, Defendant denies such
8 allegations as the documents speak for themselves.

9 17. Defendant is without sufficient knowledge or belief to admit or deny the
10 allegations of this paragraph and therefore, on that basis, denies them.

11 18. Defendant is without sufficient knowledge or belief to admit or deny the
12 allegations of this paragraph and therefore, on that basis, denies them. To the extent that the
13 allegations of this paragraph constitute legal conclusions, no responsive pleading is required or
14 given.

15 19. Defendant is without sufficient knowledge or belief to admit or deny the
16 allegations of this paragraph and therefore, on that basis, denies them. To the extent that the
17 allegations of this paragraph relate to the contents of documents, Defendant denies such
18 allegations as the documents speak for themselves. To the extent that the allegations of this
19 paragraph constitute legal conclusions, no responsive pleading is required or given.

20 20. Defendant is without sufficient knowledge or belief to admit or deny the
21 allegations of this paragraph and therefore, on that basis, denies them. To the extent that the
22 allegations of this paragraph constitute legal conclusions, no responsive pleading is required or
23 given.

24 21. Defendant is without sufficient knowledge or belief to admit or deny the
25 allegations of this paragraph and therefore, on that basis, denies them. To the extent that the
26 allegations of this paragraph constitute legal conclusions, no responsive pleading is required or
27 given.

28 22. Defendant is without sufficient knowledge or belief to admit or deny the

1 allegations of this paragraph and therefore, on that basis, denies them. To the extent that the
2 allegations of this paragraph constitute legal conclusions, no responsive pleading is required or
3 given.

4 23. Defendant is without sufficient knowledge or belief to admit or deny the
5 allegations of this paragraph and therefore, on that basis, denies them.

6 24. Defendant is without sufficient knowledge or belief to admit or deny the
7 allegations of this paragraph and therefore, on that basis, denies them.

8 25. Defendant is without sufficient knowledge or belief to admit or deny the
9 allegations of this paragraph and therefore, on that basis, denies them. To the extent that the
10 allegations of this paragraph relate to the contents of documents, Defendant denies such
11 allegations as the documents speak for themselves. To the extent that the allegations of this
12 paragraph constitute legal conclusions, no responsive pleading is required or given.

13 26. Defendant is without sufficient knowledge or belief to admit or deny the
14 allegations of this paragraph and therefore, on that basis, denies them. To the extent that the
15 allegations of this paragraph relate to the contents of documents, Defendant denies such
16 allegations as the documents speak for themselves.

17 27. Defendant is without sufficient knowledge or belief to admit or deny the
18 allegations of this paragraph and therefore, on that basis, denies them.

19 28. Defendant is without sufficient knowledge or belief to admit or deny the
20 allegations of this paragraph and therefore, on that basis, denies them.

21 29. Defendant is without sufficient knowledge or belief to admit or deny the
22 allegations of this paragraph and therefore, on that basis, denies them. To the extent that the
23 allegations of this paragraph relate to the contents of documents, Defendant denies such
24 allegations as the documents speak for themselves.

25 30. Defendant is without sufficient knowledge or belief to admit or deny the
26 allegations of this paragraph and therefore, on that basis, denies them. To the extent that the
27 allegations of this paragraph relate to the contents of documents, Defendant denies such
28 allegations as the documents speak for themselves.

1 31. Defendant is without sufficient knowledge or belief to admit or deny the
2 allegations of this paragraph and therefore, on that basis, denies them. To the extent that the
3 allegations of this paragraph relate to the contents of documents, Defendant denies such
4 allegations as the documents speak for themselves. To the extent that the allegations of this
5 paragraph constitute legal conclusions, no responsive pleading is required or given.

6 32. Defendant is without sufficient knowledge or belief to admit or deny the
7 allegations of this paragraph and therefore, on that basis, denies them. To the extent that the
8 allegations of this paragraph constitute legal conclusions, no responsive pleading is required or
9 given. To the extent that the allegations of this paragraph relate to the contents of documents,
10 Defendant denies such allegations as the documents speak for themselves.

11 33. Defendant denies the allegations of this paragraph, except to admit that Plaintiff
12 exhausted his administrative remedies. To the extent that the allegations of this paragraph relate
13 to the contents of documents, Defendant denies such allegations as the documents speak for
14 themselves. To the extent that the allegations of this paragraph constitute legal conclusions, no
15 responsive pleading is required or given.

16 34. Defendant is without sufficient knowledge or belief to admit or deny the
17 allegations of this paragraph and therefore, on that basis, denies them. To the extent that the
18 allegations of this paragraph constitute legal conclusions, no responsive pleading is required or
19 given. To the extent that the allegations of this paragraph relate to the contents of documents,
20 Defendant denies such allegations as the documents speak for themselves.

21 35. Defendant is without sufficient knowledge or belief to admit or deny the
22 allegations of this paragraph and therefore, on that basis, denies them. To the extent that the
23 allegations of this paragraph constitute legal conclusions, no responsive pleading is required or
24 given.

25 36. Defendant denies the allegations contained in this paragraph. To the extent that
26 the allegations of this paragraph constitute legal conclusions, no responsive pleading is required
27 or given.
28

Affirmative Defenses

Defendant asserts the following additional and affirmative defenses to Plaintiff's Complaint:

First Affirmative Defense

37. Plaintiff's Complaint fails to state a claim against Defendant upon which relief can be granted.

Second Affirmative Defense

38. Any alleged conduct by Defendant complained of by Plaintiff was, and is, undertaken in good faith and is lawful, proper conduct in accordance with the governing statutes and regulations.

Third Affirmative Defense

39. Plaintiff's claims are barred, in whole or in part, because Plaintiff is not as a matter of law entitled to the forms of relief he seeks in this action.

Fourth Affirmative Defense

40. Plaintiff's claims against Defendant are barred, in whole or in part, by the doctrine of estoppel.

Fifth Affirmative Defense

41. Plaintiff's alleged injuries, if any, were caused in whole or in part by a non-party or non-parties, known or unknown. Defendant reserves the right to amend its defense when and if those identities become known.

Sixth Affirmative Defense

42. In the event Plaintiff recovers any sum from any non-party by way of settlement, arbitration award or other pre-trial recovery for any injury alleged in the Complaint, then Defendant is entitled to a set-off for such pre-trial recovery as against any damage award which may be entered against Defendant.

Seventh Affirmative Defense

43. Plaintiff undertook an administrative appeal which exhausted his administrative remedies and created an administrative record. Based on the administrative record, Defendant did not act arbitrary and capricious in denying Plaintiff's claim for benefit.

Eighth Affirmative Defense

44. The Plan grants discretionary authority to the plan administrator and claims administrator to interpret the Plan terms and determine the applicable payment of benefits. Any alleged conduct by the plan administrator or claims administrator was consistent with this grant of discretionary authority, the terms of the plan, and the governing statutes and regulations.

Ninth Affirmative Defense

45. Any and all additional affirmative defenses that become available or apparent during discovery or otherwise are hereby reserved and this Answer to the Complaint may be amended to assert such additional defenses.

WHEREFORE, Defendant Google Inc. Welfare Benefit Plan prays for relief as follows:

1. That the Complaint be dismissed with prejudice and judgment entered on its behalf;
2. That Defendant be awarded its attorneys' fees and costs of suit;
3. And such further and other relief as the Court deems just and proper.

Dated: November 19, 2014

MAYNARD COOPER & GALE LLP

By: /s/ CHRISTOPHER J. RILLO

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*Attorney for Defendant Google Inc.
Welfare Benefit Plan*

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies on November 19, 2014, I electronically filed the foregoing: **DEFENDANT GOOGLE INC. WELFARE BENEFIT PLAN'S ANSWER TO THE COMPLAINT** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Mark Zavislak, *Plaintiff (Pro Se)*

/s/ Christopher J. Rillo